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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JARROD MATTHEW TROUT,

Defendant and Appellant.

2d Crim. No. B213112
(Super. Ct. No. 2007022829)
(Ventura County)

Jarrold Matthew Trout appeals from the judgment entered following his guilty plea to possession of methamphetamine (count 1) and resisting, obstructing or delaying a peace officer (count 2). (Health & Saf. Code, § 11377, subd. (a); Pen. Code, § 148, subd. (a)(1).)¹ Trout also admitted that he had suffered one prior conviction within the meaning of the Three Strikes law and one prior prison term. (§§ 667, subds. (c) & (e)(1), 668, 1170.12, subds. (a) & (c)(1), 667.5, subd. (b).) The trial court sentenced Trout to state prison for 32 months (the low term of 16 months doubled) on count 1, and imposed a concurrent 180-day jail sentence on count 2. The trial court dismissed the remaining charges and prior conviction allegation.

Trout contends the trial court erred in denying his motion to suppress evidence. (§ 1538.5.) We affirm.

¹ All further statutory references are to the Penal Code unless otherwise stated.

Facts and Procedural History

Ventura Police Department Officer Tim Ferrill was dispatched to a liquor store during the evening of October 16, 2007. The store clerk had notified police that three female juveniles were soliciting adults to purchase alcohol for them. Upon arrival, Officer Ferrill saw three female juveniles sitting on a curb in front of the store along with an adult male. The officer contacted the store clerk who informed him that the female juveniles had attempted to steal alcohol at one point, and had been asking adults inside and outside of the store to purchase alcohol for them. The clerk did not specify the gender of the adults being solicited or identify any specific adult.

Officer Ferrill approached the group seated in front of the store and asked the male adult (Trout) his name. Trout responded with the name "Jake" and then stood up. The officer noted that Trout appeared "nervous." Officer Ferrill asked Trout to sit back down. Trout told the officer that he did not want to talk to him and began to back away. The officer again asked Trout to have a seat on the curb because he "had to ask him some questions," but Trout continued to back away quickly from the officer. Officer Ferrill moved toward Trout and attempted to place him in a "twist-lock." Trout then actively resisted the officer by "pulling his arms away, and also at the same time trying to walk away." A second officer assisted in restraining Trout, who was then arrested for violating section 148, subdivision (a)(1). A subsequent search of Trout's person yielded a pipe used for smoking narcotics and approximately .34 grams of methamphetamine.

In his motion to suppress, Trout challenged the lawfulness of his detention. He argued that the encounter was consensual, the officer had no specific and articulable facts on which to base a legal detention, and that the search was unreasonably conducted without a search or arrest warrant.

The trial court found that the detention was lawful and that Trout's subsequent resistance provided Officer Ferrill with probable cause for arrest and for the search incident to that arrest.

Discussion

Trout first contends that Officer Ferrill unlawfully detained him because "[t]here was no objective indication that [he] was violating the law." He argues that he was contacted by Officer Ferrill on a "purely consensual basis" from which he "elected to walk away," giving Officer Ferrill no basis on which to detain him.

"The standard of appellate review of a trial court's ruling on a motion to suppress is well established. We defer to the trial court's factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment." (*People v. Glaser* (1995) 11 Cal.4th 354, 362.)

A consensual encounter may involve merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions. It involves no seizure and requires no objective justification. (*Florida v. Royer* (1983) 460 U.S. 491, 497; see also *Wilson v. Superior Court* (1983) 34 Cal.3d 777, 784.) "The person approached, however, need not answer any question put to him; indeed, he may decline to listen to the questions at all and may go on his way." (*Florida v. Royer, supra*, at pp. 497-498.) However, this determination "does not imply that the manner in which a person avoids police contact cannot be considered by police officers in the field or by courts assessing reasonable cause for briefly detaining the person." (*People v. Souza* (1994) 9 Cal.4th 224, 234.)

Circumstances short of probable cause to arrest may be constitutionally sufficient to justify a forcible stop. (*People v. Souza, supra*, 9 Cal.4th at pp. 230-231.) A temporary detention for the purpose of investigating possible criminal activity is permissible based on an officer's reasonable suspicion if the "officer can point to specific articulable facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity." (*Id.* at p. 231.) "The possibility of an innocent explanation does not deprive the officer of the capacity to entertain a reasonable suspicion of criminal conduct. Indeed, the principal function of [the officer's] investigation is to resolve that very ambiguity and

establish whether the activity is in fact legal or illegal" (*In re Tony C.* (1978) 21 Cal.3d 888, 894.)

Here, Officer Ferrill was justified in temporarily detaining Trout to investigate whether he was involved in purchasing alcohol for the three girls. Trout was sitting with a group of juvenile females who had been seen soliciting adults to purchase alcohol on their behalf. It is a violation of Business and Professions Code section 25658 to provide alcohol to a minor. Officer Ferrill observed that Trout appeared to be "considerably older" than the females and estimated Trout's age as being from his mid to late twenties and therefore an adult who could purchase alcohol. The officer also noted that Trout appeared to be the "most nervous" individual of the group. Finally, Trout gave his name as "Jake" and then "stood up" and began to "back away" when contacted by Officer Ferrill. Given these circumstances, the officer had facts that, in light of the totality of the circumstances, provided objective manifestation that Trout may be involved in some criminal activity. The temporary detention of Trout was reasonable.

Trout next contends that there was no probable cause to arrest him for resisting the officer and, therefore, no justification for a search incident to arrest. He asserts that the encounter with Officer Ferrill maintained its status as a consensual encounter and never reached the level of a detention. "The fact the officer told Trout to 'sit down' is not enough to convey to a reasonable person that they are detained or to commence a detention." Trout adds that "[a] person cannot commit the crime of resisting a lawful detention unless they have been informed they are detained."

As respondent observes, Trout waived this issue by failing to make this specific claim in his written motion to suppress, filed below, or at the hearing on the motion. (*People v. Scott* (1993) 17 Cal.App.4th 405, 410-411.) At the hearing, the trial court asked counsel "if it's agreed and stipulated between the parties that the issue is really gonna rise or fall upon whether there's a basis for the detention, and if the Court finds there is an inadequate basis for the detention, then the evidence at issue would be regarded as fruit of the poisonous tree." Defense counsel replied, "Yes, your Honor." At

no time during the hearing did defense counsel assert that probable cause was lacking to arrest Trout for violating section 148. In any event, the contention fails on its merit.

"[A] person has been "seized" within the meaning of the Fourth Amendment only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." (*Wilson v. Superior Court, supra*, 34 Cal.3d at p. 790, fn. omitted, quoting *United States v. Mendenhall* (1980) 446 U.S. 544, 554.)

"[C]ircumstances that might indicate a seizure" include "the use of language or tone of voice indicating that compliance with the officer's request might be compelled." (*United States v. Mendenhall, supra*, 446 U.S. at p. 554; *In re Manuel G.* (1997) 16 Cal.4th 805, 821.) Additionally, "*Mendenhall* established that the test for existence of a 'show of authority' is an objective one: not whether the citizen perceived that he was being ordered to restrict his movement, but whether the officer's words and actions would have conveyed that to a reasonable person." (*California v. Hodari D.* (1991) 499 U.S. 621, 628.)

Here, Trout was twice told by Officer Ferrill to sit down. On the second occasion, the officer specifically told him to have a seat on the curb because he "had to ask him some questions." This "show of authority" would convey to a reasonable person that their movement was being restricted. Trout responded by continuing to walk away. As the officer attempted to restrain him, Trout "pulled away" and "struggled" with Officer Ferrill and Officer Snow for approximately 20 seconds. This resistance provided probable cause to arrest and led to the charge of resisting, obstructing or delaying a peace officer. (§ 148, subd. (a)(1).) The subsequent search of Trout's person was therefore justified.

Trout relies on *In re Manuel G., supra*, 16 Cal.4th 805, for the proposition that "[t]he fact an officer has ordered a person to sit on a curb does not, by itself, transform a consensual encounter into a detention." We disagree with Trout's reading of the case. In *Manuel G.* our Supreme Court concluded that the minor had threatened the officer during a consensual encounter and before any directive by the officer that Manuel

G. sit on the curb. It was the threat that precipitated the officer's order and subsequent detention. On these facts the court concluded that there was a lawful detention. (*Id.* at pp. 822-823.) So, too, in the instant matter. As we have noted, the officer was justified in effecting the detention based on his belief that Trout was implicated in obtaining alcoholic beverages for the girls. Not unlike the threat in *Manuel G.*, the officer's reasonable suspicion preceded Trout's objectionable conduct.

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P.J.

COFFEE, J.

Kevin J. McGee, Judge

Superior Court County of Ventura

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